



FINAL STATEMENT OF REASONS

PROPOSED REGULATORY ACTION

DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 1. Surface Mining and Reclamation Practice

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subdivision (d), the State Mining and Geology Board (Board) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

In addition, the Board has the following updates to the Initial Statement of Reasons:

After the 45-day comment period, the Board made additional changes to the proposed regulatory language and documents following two additional 15-day comment periods. Initial changes and additions to the regulatory language and documents are designated by a single underline or a single strikeout. Amendments made to the language and forms incorporated by reference following the formal 45-day comment period are designated by a double-underline or a double-strikeout. Changes made after the additional 15-day comment period of the language and forms incorporated by reference are designated by italicized double-underline and italicized double-strikeout. The sets of changes are also listed in the header of the proposed final regulatory language.

Changes to the Regulatory Language

Regulatory language for California Code of Regulations (CCR) section 3504.5(a) is amended to replace the date of forms MRRC-1 and NOCI-1 from “(9/18)” to “(2019),” to reflect when the final edits for the new form were completed.

Moreover, regulatory language for CCR section 3504.5(b) is amended to clarify whom is considered a qualified lead agency employee. The word “contractors” is added and the phrase “and those hired pursuant to third party contracts” is removed. The purpose of this change is to

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make specific and implement PRC section 2774(b)(1). This change is necessary to remove confusion on the meaning of third party contracts. Contractors and contract employees include independent consulting and engineering firms and local government employees retained by newly created cities to continue the administration and enforcement of SMARA within the jurisdiction of the new lead agency, respectively.

Additionally, section 3504.5(c) is amended to make specific the ethical responsibilities of the mine inspector. These ethical responsibilities apply to both licensed persons and non-licensed persons as well as contract employees and those hired as consultants. The phrase “as a consultant, contractor, or” is added to the list of specific individuals who cannot perform an inspection if they hold a financial interest in the mine. The phrase “and those hired pursuant to third party contracts” is removed because it is unnecessary language as explained in the previous paragraph. The purpose of this change is to make specific and implement PRC section 2774(b)(1). The changes are necessary to ensure the inspector has no conflicts of interest which might compromise the adequacy and integrity of the inspection in part or as a whole.

New subdivision 3504.5(e), formerly section (g), is amended to remove “documents prepared” and add “prepared documents” due to the new phrasing being more succinct language. Furthermore, the word “conduct” is replaced with “the date” of the inspection. This small change clarifies at which point the inspection ends and the 90-day period to submit all related documents to the Division of Mine Reclamation (DMR) begins.

Changes to the Surface Mine Inspection Report form

The Surface Mine Inspection Report, form MRCC-1 (9/18), will be amended to be known as MRCC-1 (2019) to reflect the most recent changes to the document being in the current year, 2019. This change will be on every page and appears in the header of the document with the page number under the department identifying information. Additionally, in the header, the “I.” designation of former “Block I” is removed from “I. Date Inspection Conducted.” The box in the header will remain the same but it will no longer be designated with a Roman Numeral because this section will be in every page’s header of the Inspection Report. Also, in the header the California mine identification “#” symbol will be changed to “Number” to clarify meaning. This change will appear in every page’s header.

The removal of the “I.” from former “Block I” in the header changes the Roman Numeral designations for all the other Blocks on all pages of the Inspection Report as well. “Block II” becomes “Block I,” “Block III” becomes “Block II,” Block “IV” becomes “Block III,” “Block V” becomes “Block IV,” “Block VI” becomes “Block V,” “Block VII” becomes “Block VI,” “Block VIII” becomes “Block VII,” “Block IX” becomes “Block VIII,” and finally, “Block X” becomes “Block IX.” On Page 1, the phrase, “See reverse side of each form page for completion instructions,” is removed from the title of the report because the instructions for each page are moved to the end of the Inspection Report to simplify the document.

The removal of the “#” symbol continues in “Block IV, Approved Documents.” The cells for “Permit #” and “Reclamation Plan #” will both drop the “#” symbol for “Number” to further clarify meaning. Additionally, in Block IV the boxes for “Interim Management Plan” are altered to reflect the requirements of PRC section 2770(h)(2)(A). An interim management plan is allowed by statute to have two renewals following the initial approval of the interim management plan. This section is amended to have boxes that read, “Not Applicable,” “Initial,” “1st Renewal,” and “2nd Renewal” instead of “Not Applicable,” “1st,” “2nd,” and “3rd.” This specific change answers a concern brought to the State Mining and Geology Board (SMGB) through public comment. In Block V, the statement “If so, please explain,” becomes “If yes, explain,” to offer more succinct language to the section.

On Page 2, Block VI, the word “Currently” is replaced with the phrase “Most Recently.” This change addresses a specific public comment. The change is to capture the date of the most recently approved Financial Assurance Cost Estimate (FACE), which would be the date the lead agency last approved a FACE for the operation. In addition, the term “currently” is defined to capture the FACE that should have been approved by the lead agency within the current or previous calendar year in relation to the date of the inspection. The “most recently” approved FACE should be, but is not necessarily, the “currently approved” FACE as some operations may go on for years before obtaining an approved FACE through the annual approval process outlined under PRC section 2773.4(d)(1)(A).

The subdivisions of Block VII are renumbered to reflect common hierarchical heading practices. The hierarchy of headings becomes: Roman Numerals (I, II, III), followed by capital letters (A, B, C,), then numbers (1, 2, 3), and lastly romanettes (i, ii, iii). Additionally, in the title for Block VII the phrase “on reverse side of page” is removed in reference to the location of the instructions being at the end of the document now.

Block VIII consists of multiple cells that are now discernable by adding hierarchical heading practices and are listed from A to O to allow for easier location on the instructions for each section.

On Page 5, Block VIII, Subdivision A, the phrases, “Additional sheets/documents/sketches attached” and “Photographs attached,” along with the corresponding “Yes” and “No” boxes are removed. The phrasing is replaced by the statement, “Additional observations/sheets/documents/sketches/photographs attached,” with an additional “Yes” and “No” box set. This change encompasses both statements and provides more space in the box for written or typed answers to describe general observations.

Page 6, Block VIII, Subdivision F, is amended from “Is the fee category reported in the most recent Annual Report consistent with the conditions during the inspections,” to “Describe the fee category reported in the most recent Annual Report and its consistency with the conditions observed during the inspection” This amended language also removes the corresponding “Yes” and “No” boxes. Without the boxes, the inspector must take time to write out an answer instead of just marking yes or no. This

change is important to help create a larger dialogue between the mine inspector and the operator of the mine.

On Page 6, Block VIII, Subdivision H is amended following the first 15-day public comment period based on a recommendation from a member of the SMGB. These changes include removal of the bulleted 1 through 4 numbering and are minimal, non-substantial changes. This alteration is necessary because the section does not require finding 4 conditions or aspects of the operation that are inconsistent with the reclamation plan or SMARA. There might only be 1 condition or possibly more than 4. Retaining the numbers may mislead inspectors.

Furthermore, in Block VIII, Subdivision I the phrase, “Do any of those conditions or aspects require evaluation by a state-licensed profession or specialist?” along with the corresponding “Yes, please describe:” and “No, please describe:” boxes are amended in a non-substantial way. The section is amended to read, “Do any of those conditions or aspects require further evaluation?” Then “please describe” is dropped from the “No” box to read only “No” as a check box. The “Yes” box description section now reads, “Yes, describe (For example, further evaluation or analysis may be required by a state-licensed professional or specialist):” This amendment is made to ensure that a mine inspector must consider whether a licensed professional might be necessary for further investigation based on their training and licensure status and the question should be brought to the attention of the lead agency to make a determination if further evaluation is necessary upon consultation with licensed professionals employed within the lead agency.

Block VIII, Subdivision J drops the word “please” from both “No” and “Yes” check boxes to simplify the language. In Subdivision L, the word “Time” is added to “Start” and “Finish” to clarify meaning during the duration of inspection.

For the instructions to Form MRRC-1, the title on Page 1 is altered from “Instructions for Completing Surface Mining Inspection Report” to “State of California; Department of Conservation; Division of Mine Reclamation; Surface Mining Inspection Report, Form MRRC-1 Instructions,” to add clarification to the instructions.

Additionally, the title, “General Information” is added to Page 1 to label the instruction section, “This report form is intended to comply with the requirements of California’s Surface Mining and Reclamation Act of 1975...” Furthermore, in the “Distribution Instructions” section of Page 1, the form codes, “form MRRC-1” and “form NOCI-1,” are added following the titles for the forms parenthetically to help avoid confusion. Also, the word “Street” is written out instead of being abbreviated as “St.”

On Page 2 of the Instructions, the date and old page number, “(9/18) Page 1” are removed. Then to clarify instructions, the phrase, “Please type or print all information requested” is added. Furthermore, the phrase, “Note: you must write the date inspection conducted and the California Mine ID Number and at the top of Page 1,” is added to the instructions because the “I.” in Block I

will be removed from “I. Date Inspection Conducted.” The box in the header will remain the same but it will no longer be designated with a Roman Numeral, as mentioned previously.

This action changes the Roman Numeral designations for all the other Blocks as well on all pages of the instructions and aligns with the changes to the Inspection Report. “Block II” becomes “Block I,” “Block III” becomes “Block II,” Block “IV” becomes “Block III,” “Block V” becomes “Block IV,” “Block VI” becomes “Block V,” “Block VII” becomes “Block VI,” “Block VIII” becomes “Block VII,” “Block IX” becomes “Block VIII,” and finally, “Block X” becomes “Block IX.”

Additionally, Arabic numbers are added that coincide with the Block to ensure those using the form do not get confused on what the numerals mean or reference. For example, “1. Block I,” “6. Block VI,” etc.

Moreover, the page numbers for the instructions are moved to the bottom of the page to clear up the header on each page of the instruction.

The Inspection Report Instructions, Page 2, Block IV, are amended by adding the word “currently” to the approved reclamation plan to avoid confusion regarding which reclamation plan is being addressed. To address public comment, the sentence, “In cases where a Reclamation Plan Number has not been assigned by the lead agency, enter any unique lead agency assigned identifier for the approved reclamation plan,” is added to the Block IV instructions to ensure that a specific identifier is used.

The instructions for Page 3, Block VI are also updated to reflect this clarification. The sentence, “A Financial Assurance Cost Estimate is considered current if it has been approved in accordance with applicable requirements of PRC §2773.4 within the current or previous calendar year,” is added to this section. This addition coincides with the additions to the Inspection Report that clarify a question from public comment and is further intended to conform to the definition of Financial Assurances under PRC section 2736.

Page 3 Block VII is updated to reflect the changes in the Roman Numerals. In the language, section “VIII” becomes “VII,” and Items “1,” “12,” and “13” become “A,” “L,” and “M” respectively.

The instructions for Page 4, Block VIII are updated to add clarification to the various cells on the corresponding page of the report. Also, for each of the different cells in Block VIII a letter designation A through O differentiates them. The added language to Block VIII is...

“The inspector responds to the statements or questions in the space provided for (A) through (O). Additional instructions are provided below for (A), (F), (G), (I), (J), (L), (M), (N), and (O).

(A) If additional space is required to record observations, photographs, etc., please check the corresponding box in (A) and attach documentation to the MRRC-1.

(F) Requires the inspector to describe the fee category reported in the most recent Annual Report and its consistency with the conditions observed during the inspection.

(G) Requires the inspector to describe limitations encountered during the inspection. These limitations may include, but are not limited to: inaccessibility to certain areas due to weather, blasting, excavating, etc.

(I) Requires checking a “Yes” or “No” box. Conditions or aspects identified in (H) requiring further evaluation should be described further.

(J) Requires checking a “Yes” or “No” box. A description of why or why not a Notice of Violation was issued for conditions or aspects identified in (H) should be provided.”

Furthermore, letter “L” is used for the “Duration of Inspection” statement that remains unchanged, letter “M” is used for the existing “Weather Codes” section, letter “N” is used for the existing “SMARA Status Mine Codes” section, and “O” is used for the attendees’ statement.

At the end of the instructions, on Page 5, the distribution instructions from Page 1 are repeated. The entire instruction language added is...

“Distribution Instructions

The Lead Agency shall forward to the Operator a copy of the Notice of Completion of Inspection (NOCI-1), the completed Inspection Report (MRRC-1), and any other supporting documentation (PRC § 2774(b)(2)).

The Lead Agency shall retain the original copy of the Inspection Report and submit one copy of this Inspection Report, along with the Notice of Completion of Inspection (PRC § 2774(b)(1)), within 90-days of conducting the inspection, to:

Department of Conservation
Division of Mine Reclamation
801 K Street, MS 09-06
Sacramento, CA 95814-3529

If any part of the operation or mined lands inspected is on Federal land, one copy of this Inspection Report and Notice of Completion of Inspection shall be forwarded to the appropriate Federal entity, i.e. the BLM or USFS regional office.”

Adding the distribution instructions to the end of the instructions provides a second explanation for where and how to send the completed Inspection Report.

Changes to the Notice of Completion of Inspection form

Lastly, there were no public comments or amendments to the Notice of Completion of Inspection Form (NOCI-1), so changes to the original draft are minimal and just provide clarification to the individual filling out the form. Since the NOCI-1 is a brand-new form, all the lines are at least underlined once to signify initial additions. All subsequent changes were completed following Board approval and are minimal, non-substantial changes. The NOCI-1 forms date will be changed from “(9/18)” to “(2019)” to reflect the most recent changes to the document taking place in 2019.

Additionally, in the address box on Page 1 of the NOCI-1 Form, the line for “Name of Lead Agency” is changed to “Lead Agency Name.” The line for “Lead Agency Address” is altered to “Lead Agency Contact Name.” Lastly, the line “Lead Agency Address” is changed to “Lead Agency City, State, Zip Code.” These minor changes are to clarify to the Lead Agency where their information is intended to be written.

DETERMINATION OF LOCAL MANDATE

Local agencies are currently required to implement portions of the Surface Mining and Reclamation Act of 1975 (SMARA) through PRC section 2710 et. seq., including conduct of annual inspections of surface mining operations. Development and adoption of an annual mine inspection form is required by statute under PRC section 2774(b)(1). Therefore, the State Mining and Geology Board (SMGB) has determined that this new and amended regulatory language does not impose a mandate on local agencies or school districts.

STATEMENT OF ALTERNATIVES CONSIDERED

The SMGB has determined that no reasonable alternatives it considered or that had otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed. In addition, the SMGB determined that no alternative would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Existing legislative and regulatory requirements provide that surface mining operators are to receive an annual inspection of their mine site to determine whether the surface mining operation is compliant with state policy. Through PRC section 2774(b)(1), the Division of Mine Reclamation (the Division) is required to develop a form that shall be used by all inspectors. Additionally, the SMGB is required to approve such form through section 2774(b)(1). Finally, the statute requires a Notice of Completion of Inspection (NOCI) be submitted to the Division by the lead agency, and therefore utilization of NOCI form meets this requirement. An alternative of taking no action would result in ignoring a statutory requirement that could cause unnecessary issues in the mine inspection process.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department, and the SMGB, SMARA and its implementing regulations and federal law are coordinated.

INCORPORATION BY REFERENCE

Forms MRRC-1 and NOCI-1 are incorporated by reference and were made available to the public for review and comment during the initial noticed public comment period of September 28 – November 12, 2018. After this comment period, substantial sufficiently related changes were made to the MRRC-1 form based on comments SMGB staff received. No comments were received by SMGB staff for the NOCI-1 form during this period. The revised MRRC-1 form was then made available to the public for further review and comment for a 15-day period from April 10 – April 25, 2019. Further revisions were considered following the Board's approval of the rulemaking package to provide more space for answers on the document. Additionally, clarifying instructions were added to further define what is required in each section of the MRRC-1 form. These changes were then made available for further public comment from May 31 – June 15, 2019. The forms were mailed to those persons specified in subsection (a)(1) through (4) of Section 44 of Title 1 of the CCR. Furthermore, the forms were also made available on the SMGB website for both comment periods.

Incorporating by reference forms MRRC-1 and NOCI-1 is necessary because it would be cumbersome and otherwise impractical to publish the documents in the CCR. The newly adopted and updated forms will be available on the SMGB website and can filled out electronically. These forms are reasonably available to the class of persons affected by them. For these reasons, the SMGB has determined the forms MRRC-1 and NOCI-1 should be incorporated by reference.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE OF PUBLIC COMMENT PERIOD OF SEPTEMBER 28 – NOVEMBER 12, 2018

Commentator 1 – Chris Hoem – Dept. of Planning and Development – Santa Clara County

Comment 1A: Ensure electronically fillable fields are available for all input spaces on the form.

Response to Comment 1A: Comment accepted. Currently the document is fillable with Adobe Pro Software.

Comment 1B: Page 1, Block V: What is the Reclamation Plan #? We don't number reclamation plans. However, we do have county file numbers for each reclamation plan amendment. Please clarify.

Response to Comment 1B: Comment accepted. Revisions have been made to the MRRC-1 form such that in cases where a Reclamation Plan Number has not been assigned by the lead agency,

enter any unique lead agency identifier for the approved reclamation plan. Clarifying instructions on Reclamation Plan Numbers are added to Block V instructions. Also, the “#” symbol will be written out as “number” to avoid confusion with other current meanings of the symbol.

Comment 1C: Page 1, Block V: Interim Management Plans can only be 1st or 2nd. 3rd is not allowed. PRC § 2770(h)(2)(A).

Response to Comment 1C: Comment accepted. According to PRC § 2770(h)(2)(A) the initial Interim Management Plan may only be renewed twice for a total additional period of ten years. The check boxes in Block V concerning the Interim Management Plan will change from “Not Applicable, 1st, 2nd, 3rd” to “Not Applicable, Initial, 1st Renewal, 2nd Renewal.” This change will ensure compliance with PRC § 2770(h)(2)(A) and avoid any confusion on the number of renewals allowed.

Comment 1D: Page 3, Block VII, A: Please clarify—is the date of the “currently approved FACE” the approval date or the date submitted to the lead agency?

Response to Comment 1D: Comment accepted. The term “Currently” is being replaced by the term “Recently” to capture the date the lead agency last approved a FACE for the operation, and not when it is submitted to the lead agency for review and approval. In addition, the term “currently” is defined to capture the date of the approved FACE that should have been approved by the lead agency within the current or previous calendar year in relation to the date of the inspection as required by the annual approval process outlined under PRC section 2773.4(d)(1)(A). The “most recently” approved FACE should be, but is not necessarily, the “currently approved” FACE as some operations may go on for years before obtaining an approved FACE through the annual approval process outlined under PRC section 2773.4(d)(1)(A).

Comment 1E: Pages 5 and 7: Column 4 “VN?” should be reinstated in order to clearly tally the number of violations in each category.

Response to Comment 1E: The SMGB disagrees that a separate “VN” column is necessary. The revised Block IX on the Inspection Report is designed to elicit more detailed information relating to conditions and aspects of the operation that are or may be inconsistent with the approved reclamation plan or SMARA. If a violation is noted, Block IX allows the inspector to explain if a notice of violation was issued or whether a NOV was not issued and why was it not issued. The former “VN” column may have provided an at-a-glance tally of violations but left out further explanation of the violations. The SMGB assumes the commentator means pages 3 and 4 based on the question. Comment rejected.

Comment 1F: Pages 5 and 7: CA MINE ID # is redundantly in two places on each page.

Response to Comment 1F: Comment accepted. The box for the CA MINE ID # will only appear once per page in the header to eliminate the redundancy. The SMGB assumes the commentator means pages 3 and 4 based on the question.

Comment 1G: Page 9: Suggest moving “Photographs attached: Yes No” to the right of “Additional sheets/documents/sketches attached: Yes No” in order to make more vertical space for IX.

Response to Comment 1G: Comment accepted. On page 5, Block IX, the check boxes for “Additional sheets/documents/sketches attached” and “Photographs attached” will be combined at the bottom of box IX as one set of check boxes. The combined phrasing will read “Additional observations/sheets/documents/sketches/photographs attached? Yes No”

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE APRIL 10, 2019 THROUGH APRIL 25, 2019 PERIOD THE MODIFIED TEXT WAS AVAILABLE.

No comments were received during this comment period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE MAY 31, 2019 THROUGH JUNE 15, 2019 PERIOD THE MODIFIED TEXT WAS AVAILABLE.

No comments were received during this comment period.